

**A. Subloop Unbundling**

The Commission's Final Report of January 11, 2002 addresses two emerging service topics, one of which is subloop unbundling.<sup>79</sup> Subloop unbundling was not expressly addressed in the 14 point checklist, but emerged later in an FCC determination that the lack of access to unbundled subloops, where technically feasible, materially diminishes a CLEC's ability to offer services. Generally, the Commission acknowledges the likelihood of costing and pricing aspects that may be addressed in a Qwest sequel cost docket. Of the sixteen initial subloop issues, seven were resolved in the multi-state workshop process, two were deferred to a costing and pricing docket and seven others remain. The two deferred issues involved undefined rates and pricing for overly broad definitions of subloop categories. The Commission expects these two deferred issues and associated questions<sup>80</sup> will be addressed in Qwest's sequel cost docket (D2002.7.87).

As for the balance of subloop issues, the Commission finds reasonable and approves, with modification, the Facilitator's resolutions for: Issue #1 (Subloop Access at MTE Terminals); Issue #2 (Requiring LSRs for Access to Premise Wiring at MTEs); Issue # 3 (CLEC Facility Inventories with cost recovery issues deferred to the sequel cost docket); Issue # 4 (Determining Ownership of Inside Wire); Issue # 5 (Intervals); Issue # 6 (Requirement for Qwest-Performed Jumpering at MTEs); and Issue # 7 (Expanding Explicitly Available Subloop Elements).

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<sup>79</sup> See id. at pages 18-54.

<sup>80</sup> Qwest's answers to questions at pages 22-25 on trouble isolation charges, deaveraging et cetera.

Conclusion: Aside from any cost, price and related issues, Qwest satisfies its subloop unbundling requirements. The Commission expects costing and pricing issues to be addressed in Qwest's sequel cost filing.<sup>81</sup>

**B. Line Sharing**

The Commission also addressed line-sharing and reverse line sharing in its Final Report of January 11, 2002 on emerging services.<sup>82</sup> While not explicit in the Section 271 checklist, the FCC's rules require incumbents to provide nondiscriminatory access to the high frequency portion of a loop, and only then if the incumbent LEC continues to provide analog circuit-switched voice band service on the loop.<sup>83</sup> Of the four line sharing issues raised in the multi-state proceeding, the one that caused the Commission to condition its favorable 271 entry recommendation upon Qwest's compliance regards reverse line sharing. Labeled "Tying Qwest Data Service and Voice Service" in the Facilitator's Report, "reverse line sharing" involves whether Qwest's failure to offer or to continue offering Megabit service, when an end use customer changes its voice service provider from Qwest to a CLEC, is an entry barrier for CLECs that seek to provide voice services.<sup>84</sup> Absent reverse line sharing the tying of Qwest's xDSL service (Megabit Service) with voice service presents an entry barrier to CLECs. The Commission emphasizes that it does not matter whether line sharing itself continues to be a

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<sup>81</sup> Qwest's sequel cost docket was filed on July 3, 2002, as docket number D2002.7.87.

<sup>82</sup> See the *Final Report on Qwest's Compliance with Two Emerging Service Items: Line Sharing and Subloop Unbundling*, January 11, 2002.

<sup>83</sup> 49 C.F.R. 51.311.

<sup>84</sup> See the *Final Report on Qwest's Compliance with Two Emerging Service Items: Line Sharing and Subloop Unbundling*, January 11, 2002 (pages 5-10).

required network element that must be offered and priced by Qwest: reverse line sharing will mitigate the tying arrangement that otherwise disadvantages CLEC entry into the voice market.

The Commission agreed with the Facilitator that it is an entry barrier and that it is not in the public interest to allow Qwest to tie its offering of Megabit service to its offering of voice service. Accordingly, the Commission conditions its approval of Qwest's 271 entry bid on Qwest's providing reverse line sharing for each mode of entry (resale, UNE-P and loop UNE). The Commission's Final Report agrees to accommodate associated cost and price issues in Qwest's sequel cost docket.<sup>85</sup> In its March 21, 2002 SGAT filing Qwest fails to comply with the Commission's direction in its Final Report.

The Commission concluded the other three line sharing issues were resolved. The first of these issues on ownership and access to splitters was resolved to the Commission's satisfaction. The third issue, line sharing on fiber loops, was also resolved after rounds of SGAT language changes. The fourth and last line sharing issue on the provisioning interval for line sharing is resolved consistent with the Facilitator's resolution. Any disparity in the provisioning between retail and wholesale services will result in penalties pursuant to the QPAP.

Conclusion: The Commission finds that so long as Qwest declines<sup>86</sup> to provide reverse line sharing, that Qwest's 271 entry bid is not in the public interest; however, Qwest may address associated cost and price issues in its sequel cost docket. Other line sharing issues are resolved favorably for a 271 entry bid.

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<sup>85</sup> Qwest filed its sequel cost docket (D2002.7.87) on July 8, 2002.

<sup>86</sup> See Qwest's March 21, 2002 notice updating its SGAT (page 4).

### C. Dark Fiber

Dark fiber has been recognized as necessary to consider in reviewing openness of the incumbent local service provider's network. The FCC has modified the definition of a loop to include dark fiber, defining it as "fiber that has not been activated through connection to the electronics that 'light' it, and thereby render it capable of carrying communications services."<sup>87</sup>

The definition of transport was also revised to include dark fiber.<sup>88</sup>

Qwest presented evidence and testimony that despite the low demand for dark fiber to date Qwest had processes and procedures to provision it upon request and its SGAT had been modified to comply with the *UNE Remand Order*. Settled in the workshop were provisioning and ordering processing issues, forecasting, access to dark fiber without collocation, testing issues, purchasing of a single fiber strand, addition of extended unbundled dark fiber elements, dark fiber at collocation build-out completion and cross connect charges.<sup>89</sup>

Four issues remained at close of the workshops: affiliate obligations to provide dark fiber; access to dark fiber in joint build arrangements; application of the local exchange usage requirement to dark fiber; and consistency of technical publications with the SGAT. The affiliate obligation to provide dark fiber issue arose out of the merger in 2000 of US West, the RBOC, and Qwest, an IXC. Whether the post-merger company, Qwest Communications, Inc., was obligated to unbundle any dark fiber from the pre-merger Qwest inventory of dark fiber for CLECs to buy or lease was unclear. AT&T argued that Section 251(c)(3) and 252(d)(1) of the

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<sup>87</sup> See the *UNE Remand Order*, paragraph 174.

<sup>88</sup> *Id.*, paragraphs 325-326.

<sup>89</sup> See pages 49-51 of the Facilitator's *Third Report* and page 14 of the Commission's *Final Report on Qwest's Compliance with Two Emerging Service Items: Dark Fiber and Packet Switching*, February 6, 2002.

Act obligates Qwest to make in-region dark fiber of affiliates available to CLECs. To do otherwise would allow the parent company to build fiber networks, make available the fiber to the ILEC but exclude CLECs from access to that fiber. The Commission accepted the Facilitator's resolution of the issue, which determined that whatever dark fiber the ILEC makes available to itself, from whatever source, must also be made available to CLECs. A similar resolution was applied to the issue of access to dark fiber in joint build arrangements.

Application of the local exchange usage requirement established by the FCC in its *Supplemental Order Clarification*<sup>90</sup> to dark fiber raised the most controversy. AT&T argued that applying the local exchange usage requirement to dark fiber was nonsensical because dark fiber is typically used for multiple customers, not one customer as envisioned in the FCC's local exchange usage test language. Qwest argued dark fiber is sometimes reserved for use by a single customer, such as a large business, and the FCC's language regarding local exchange usage does apply to situations where there are multiple customers. The Commission in its preliminary report sought a fuller explanation from AT&T regarding how Qwest's SGAT language (9.23.3.7.2) was not appropriate to apply to dark fiber and how the objectives of universal service should be addressed in this context. AT&T cited a decision by the Washington Utility and Transportation Commission (WUTC) as support for its position. The Commission found the WUTC decision was intended to maintain consistency with an earlier arbitration decision and other proceedings and the WUTC decision did not address the issue of whether the FCC local

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<sup>90</sup> See the Facilitator's *Third Report*, page 56-57. In the *Supplemental Order Clarification* at ¶ 8 the FCC stated that IXC's may not substitute an incumbent LEC's unbundled loop-transport combinations for special access services unless they provide a significant amount of local exchange service, in addition to exchange access service, to a particular customer.

exchange usage test was appropriate. Therefore the Commission declined to accept AT&T's arguments and accepted the Facilitator's recommendation, closing the issue.<sup>91</sup>

The final issue of an inconsistency between the agreed-to SGAT language and technical publications was resolved when Qwest confirmed that the publication had been updated and distributed to the 271 superlist on October 24, 2001.

#### **D. Packet Switching**

In the *UNE Remand Order* the FCC found that packet switching is not required to be provided as a UNE except under certain conditions. When these conditions apply then it is presumed that for the CLEC to provide advanced services at the same level as the incumbent or its affiliates, then the CLEC must have access to unbundled packet switching. If the ILEC refuses to allow a CLEC to locate its DSL electronic equipment in the ILEC's remote terminals and there is no unbroken home-run copper loop between the central office and the customer, then packet switching must be unbundled.<sup>92</sup>

Qwest presented testimony that it had committed to provide packet switching in accordance with the rules established by the FCC and presented its proposed SGAT language in the multi-state proceedings AT&T offered a number of criticisms of Qwest's proposals.<sup>93</sup> Many of the concerns raised by AT&T were addressed in the Colorado Emerging Services workshop

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<sup>91</sup> However, the Commission noted in its *Final Report on Qwest's Compliance with Two Emerging Service Items: Dark Fiber and Packet Switching*, February 6, 2002 at page 23 that if AT&T had evidence to support its contention of a flaw in the FCC's local exchange usage test AT&T should argue that before the FCC.

<sup>92</sup> Id. at pages 24-35.

<sup>93</sup> See pages 26-27 of the *Final Report on Qwest's Compliance with Two Emerging Service Items: Dark Fiber and Packet Switching*, February 6, 2002 and the testimony of Kenneth Wilson for AT&T.

and were brought forward into the multi-state record. Only five issues remained unresolved at closure of the workshop and the only one not settled based upon the Facilitator's recommendations in the *Third Report* was use of Individual Case Basis (ICB) pricing. AT&T argued that use of ICB pricing in the SGAT is sufficient reason to deny compliance on this checklist item. In its brief, Qwest responded that it was developing unbundled packet switching prices that it would have before making its 271 application with the FCC.

In its preliminary report the Commission suspended judgment on this issue until Qwest had the opportunity to provide additional information on order volumes for packet switching and its plans to address unbundled packet switching prices. Qwest notes that the SGAT filing made on October 12, 2001 Exhibit A (rates) included a price for packet switching. The Commission's final report directs Qwest to include unbundled packet switching prices in the cost docket it had committed to file in 2002.<sup>94</sup> On July 8, 2002 Qwest filed with the Montana PSC a proposal for cost based wholesale prices for the network elements addressing unbundled packet switching prices.

## VI. COMPLIANCE WITH SECTION 272

The FCC will not approve an incumbent LEC's application for in-region, interLATA service until the incumbent demonstrates the authorization will be carried out in accordance with the safeguards required of separate affiliates in § 272.<sup>95</sup>

Qwest complied with the requirements of § 272. In the multi-state proceeding the Facilitator required Qwest to have an independent (i.e., third-party audit) testing, covering the period from

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<sup>94</sup> See page 3 of Qwest's Comments on *Preliminary Report on Qwest's Compliance with Checklist Items 2 and 4*, December 21, 2001.

<sup>95</sup> 47 U.S.C. § 271(d)(3)(B).

April through August of 2001 to determine: (a) whether there have been adequate actions to ensure the accurate, complete, and timely recording in its books and records of all appropriate accounting and billing information associated with QC/QCC transactions;<sup>96</sup> (b) whether the relationship between QC as a vendor or supplier of goods and services and QCC has been managed in an arm's length manner, including, but not necessarily limited to, a consideration of what would be expected under normal business standards for similar contracts with an unaffiliated third party; and (c) whether there are reasonable assurances that a continuation of the practices and procedures examined will continue to provide the level of accuracy, completeness, timeliness, and arm's length conduct found in examining the preceding two questions.

Qwest complies with the requirements of § 272. The audit found instances where Qwest did not comply with the FCC's affiliate transaction rules, and these transactions have been corrected to comply. Qwest has addressed each of the discrepancies by strengthening existing controls or implementing new controls in efforts to avoid compliance issues in the future.

Conclusion: Qwest satisfies the requirements of Section 272.<sup>97</sup>

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<sup>96</sup> Qwest Corporation (QC) is the BOC that provides local exchange service in the 14-state region once served by US West. Qwest Communications Corporation (QCC) is the currently designated §272 affiliate. QCC is wholly owned by Qwest Services Corporation and it is the pre-merger entity through which Qwest had previously provided InterLATA services in many areas of the United States.

<sup>97</sup> See, *Final Report on Qwest's Compliance With Section 272 and Responses to Comments Received on Preliminary Report*, May 8, 2002.



## VII. PERFORMANCE ASSURANCE PLAN

The Qwest performance assurance plan (QPAP) adopted by the Montana Commission is similar in most respects to the plans adopted by the eight other states that participated in the multi-state QPAP workshop process. It is a two-tiered plan that requires Qwest to comply with agreed-upon performance standards that were collaboratively developed during the ROC-OSS testing effort. Qwest's failure to comply with the standards will result in self-executing payments from Qwest to affected CLECs and, in certain instances, to the state. The two-tiered plan is meant to provide meaningful and significant incentives (Tiers 1 and 2) to elicit Qwest's compliance. Issues that arose during the Commission's consideration of Qwest's PAP are discussed in detail in the Commission's *Final Report on Qwest's Performance Assurance Plan*.

The Montana QPAP includes a procedural cap on Qwest's total payment liability of 36 percent of Qwest's net intrastate revenues as reported in the FCC's ARMIS report, an amount that will be revised annually to reflect Qwest's most recently reported intrastate revenues.<sup>98</sup> The Commission opted for a procedural cap, in part because of Qwest's right to take tax offsets for Tier 1 and Tier 2 payments.<sup>99</sup> Therefore, when Qwest pegs its cap at \$16,000,000 it is not at all clear Qwest is netting out the tax offsets it may take.<sup>100</sup>

The Commission retained change control authority over the QPAP and stated its intention to join with other Qwest state commissions to conduct its QPAP oversight responsibilities on a

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<sup>98</sup> A procedural cap may rise if Qwest's performance under the plan results in its payments exceeding the amount of the cap on an annual basis.

<sup>99</sup> See pages 7-19 of the Commission's April 19, 2002 *Final Report on Qwest's Performance Assurance Plan*.

<sup>100</sup> See Qwest's response to the noted PSC data requests numbered PSC 144 and PSC 146 cited at page 19 of the April 19, 2002 Report; also see Qwest Brief at page 185.

multi-state basis. Those responsibilities include: the 6-month QPAP reviews that will begin once Qwest obtains FCC approval of its 271 application; a thorough review at 2 years of the effectiveness of the QPAP; long-term administration of Qwest's performance measures; auditing of Qwest's performance measurement gathering and reporting systems; and resolving QPAP-related disputes.

The QPAP provides adequate assurance that Qwest's local service market in Montana will remain open after the company obtains Section 271 approval. The QPAP contains the characteristics identified by the FCC as key elements of its evaluation of whether a plan satisfies the public interest: meaningful and significant potential liability; clearly articulated and comprehensive performance standards; a reasonable structure to detect and sanction poor performance; a self-executing mechanism that will not lead unreasonably to litigation and appeal; and assurance of the accuracy of reported data.

Conclusion: The QPAP filing appended as Attachment K to Qwest's July 3, 2002 SGAT filing is compliant.

### **VIII. MONTANA CLEC FORUM**

The Commission held the Montana CLEC Forum on January 9, 2002 in Helena, Montana.<sup>101</sup> The intent of the CLEC forum was to provide CLECs an opportunity to provide Montana-specific information regarding their actual experiences in dealing with Qwest. This forum was also facilitated by John Antonuk of Liberty Consulting.

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<sup>101</sup> See the *Commission Report on the Montana CLEC Forum*, April 3, 2002.

In its CLEC Forum Comments New Edge argued that Qwest fails to comply with the requirements of the Act. One category of issues was resolved that involve advanced services discounts for purchases from the FCC tariff.<sup>102</sup>

New Edge also wishes to obtain DSL at a resale discount. While the Commission elaborates on this issue here, it should be noted that New Edge did not apparently make the same proposal in the workshop that addressed Resale (Checklist Item No. 14) and the Commission closed that checklist item in its Final Report on Resale. The policy issues New Edge raises here were appropriate for that long-since closed Resale proceeding. However, the Commission was clear that acceptable issues for the CLEC Forum involve Montana-specific experiences in dealings with Qwest. The DSL resale issue New Edge raises would arise if New Edge has similar business with Qwest in each of Qwest's other 13 states. Therefore, on procedural grounds the Commission found that it appears inappropriate to address New Edge's issue in this CLEC Forum.

As for how to remedy the concern, the Commission notes that in order to address the DSL resale issue New Edge raises, there must occur a separation of the tied services. Once separation occurs, a cost analysis of the relevant discount for resale prices could ensue. However, this first step raises jurisdictional issues involving the FCC. If the products were separated, and once the costing and pricing is complete for the separate products, there still is need to investigate the costs of offering stand-alone DSL on a resale basis. Thus, two costing and pricing inquiries are required, one presumably, in part, at the FCC and the other involving the Commission. Once the FCC addresses the separations issue, the remaining processes may begin.

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<sup>102</sup> Id., pages 5- 6.

As a policy matter, the issue New Edge raises is a concern to the Montana Commission.

In regard to Qwest's reselling of stand alone DSL to ISPs, concerns can only be noted in the absence of record evidence on the particular circumstances by which Qwest provides such service to different kinds of ISPs. That Qwest offers stand-alone DSL to ISPs is, however, evidence of the absence of any technical problem in separating DSL from other retail services. Since it is a wholesale service, then it is not subject to resale under the Act. If it were not a wholesale service, there may still emerge other reasons that exempt it from resale.

That the local exchange market is a last bastion of monopoly power is evidenced by how Qwest chose to offer packaged xDSL and basic exchange service. The FCC, however, is at the helm on this issue. The FCC is uniquely positioned to endorse or reverse this practice. The FCC must first decide whether a policy of tying xDSL with basic exchange service offerings, such that entry into the advanced services market by means of resale that requires CLECs to also provide basic exchange service, is in the public interest. This Commission believes such tying stifles entry by competitors that wish to only provide advanced services. Therefore, it is not at all clear that it is in the public interest to continue such tying.

As addressed earlier in this report on Checklist Item 2 and 4, two issues were carried over into the CLEC Forum. Respectively these were orders rejected for lack of facilities ("held orders") and delays in making available ADSL and ISDN-capable loops (the relationship between Qwest and small CLECs). Two of the participating CLECs, 3 Rivers Telephone Cooperative and Blackfoot Communications, said they had seen greater responsiveness from Qwest coinciding with the impending final 271 reviews and with Qwest efforts to implement more substantial outreach to CLECs. The Commission has determined that it will provide for regular forums, beginning three months after 271 approval by the FCC, and continuing at about

every six months, integrated with the QPAP reviews. The for a are intended to allow the CLECs to present information broadly addressing Qwest's responsiveness in solving problems in their relationship.

Blackfoot Communications raised an issue with coordinated hot cuts. Blackfoot proposed a 12-month trial of improved field communications during hot cuts between Qwest and Blackfoot. Qwest did not object to the proposal. The Commission adopted the recommendation for a 12-month trial to be reviewed at one of the twice-yearly Montana CLEC fora.

Conclusion: As regards the resale issue, the Commission finds it is unable to mitigate the problem absent initial FCC action.

## **IX. WHOLESALE COSTING AND PRICING**

In relation to the 271 proceeding the Montana Commission entertained two separate wholesale cost dockets. In June 2000, Qwest filed<sup>103</sup> to establish TELRIC based rates and discounts for resold services. The Commission issued its Final Order On Stipulation in D2000.6.89 on October 12, 2001. That order conditionally approved of the stipulation filed by Qwest, Montana Consumer Counsel, Montana Wireless Inc., Touch America and Avista. Because of the conditional approval, a sequel cost docket was expected, and was filed by Qwest on July 8, 2002. This sequel cost docket will continue the effort at establishing TELRIC based prices for interconnection and unbundled elements. In addition to its sequel cost docket filing, Qwest also filed its updated SGAT on July 3, 2002. That SGAT includes rates for wholesale services that the Montana Commission allowed to go into effect as of July 11, 2002, including benchmarked rates for certain rates. Depending on the FCC's decision on Qwest's 271 application, other cost or price issues may also need to be addressed.

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<sup>103</sup> Docket No. D2000.6.89.

Conclusion: No apparent costing and pricing issue exists that would obstruct the Commission's decision approving of Qwest's 271 entry bid.

**X. CONCLUSION**

The Montana Commission recommends Qwest's application under Section 271 of the Act be approved once the following conditions are met: 1) Qwest mitigates the price-squeeze concern by filing with the Commission, on or before October 1, 2002, a full revenue requirements and rate design case; and 2) Qwest complies with Commission direction on reverse line sharing. In the event that Qwest does not comply with these conditions, the Commission recommends that the FCC deny Qwest's application for 271 approval.

BY THE ORDER OF THE MONTANA PUBLIC SERVICE COMMISSION

  
GARY FELAND, Chairman

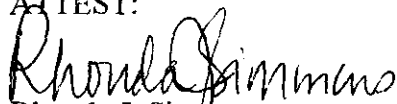
  
JAY STOVALL, Vice Chairman

  
BOB ANDERSON, Commissioner

  
MATT BRAINARD, Commissioner

  
BOB ROWE, Commissioner

ATTEST:

  
Rhonda J. Simmons  
Commission Secretary

(SEAL)

## **SEPARATE STATEMENT OF COMMISSIONER ROWE**

Multi-state collaborative work on Operations Support Systems, competitive checklist and Section 272 compliance, and a post-entry performance plan have produced significantly better results for all parties than could have been achieved by any of us separately. Benjamin Franklin's concurrence with John Hancock pertains to telecommunications as well.

The Montana Commission was deeply engaged in every aspect of the multi-state efforts. However, it did not merely adopt the multi-state recommendations. Rather, at each step it subjected the multi-state results to careful review. This is particularly apparent in modifications to the post entry performance plan and in its work on Montana-specific issues in the CLEC forum.

The process of opening markets to competition does not end with a specific occurrence. It will involve ongoing work based on changed market conditions and most importantly, lessons learned. As this work goes forward, there is a need for continued close cooperation between the FCC, state commissions, and parties on all sides. For the FCC this work includes monitoring, enforcement, and its many competition-related dockets.

For the Montana Commission, post Section 271 work will include regular meetings with CLECs, a wholesale pricing docket concerning at a minimum issues identified in the Competitive Checklist Collaborative, and monitoring and enforcement work under the framework of performance indicator and post entry performance plan implementation. The Montana Commission will also address over the coming months retail rate issues, including access rates, and perhaps more general questions of regulatory policy. I have long stated that retail regulation raises an important set of issues that should be addressed once Section 271



approval has been granted. The Montana Commission has been and remains fully committed to all of these efforts.

It is possible that, for some states, work such as PID administration and performance plan implementation could be done most effectively on a regional basis. In April, the Regional Oversight Committee for Qwest adopted a resolution supporting such an approach. Three alternative models have been developed and are currently being considered by the state commissions. For states that decide to pursue it, a regional effort would occur on a much more modest scale than was required by the just-completed collaboratives. It could provide significant benefits for Qwest and competitors (efficiency and consistency), for regulators, and ultimately for customers.

I respectfully but strongly disagree with one portion of the Montana Commission's recommendation. The FCC should decline the Montana Commission's invitation to address intrastate revenue requirements, rate design, and access rates under the umbrella of the public interest review. This is an important tangle of closely related issues, but a knot that the Montana Commission should cut through itself, using the statutory tools it already possesses, rather than borrowing the federal hedge clippers.

While the Act is concerned with opening all markets to competition, the primary focus of Section 271 is opening the local market, at which time the Regional Bell Operating Company may enter the long distance market. The many, detailed requirements imposed under Section 271 focus on the local market. Overriding Section 2(b) concerns about intra-state ratemaking, the Supreme Court concluded that wholesale TELRIC pricing is so closely related to competitive checklist requirements that the FCC may require TELRIC-compliant rates as a condition for Section 271 approval. There is no similar nexus between intrastate long distance rates and any

specific element of Section 271. I am aware of no case in which the FCC has conditioned Section 271 approval on reduction of intra-state access rates.<sup>104</sup>

The Montana Commission's position is based primarily upon an alleged price squeeze in the intraLATA long distance market. One court has addressed a possible wholesale/retail price squeeze (as distinct from an access/long distance price squeeze) and has remanded that issue to the FCC for further deliberations, ensuring all facts are considered. See, Sprint Communications v. Federal Communications Commission, 274 F.3d 549 (D.C. Cir. 2001)(remanding to FCC for more adequate discussion of why an alleged price squeeze is relevant in the public interest analysis).

The FCC has recognized the complexity of the wholesale/retail price squeeze issue, and appears to be moving with appropriate caution, and with sensitivity to the Section 2(b) reservation to the states of authority over intrastate rates. There is similar complexity associated with any access/long distance price squeeze, but there is no similar nexus between the alleged price squeeze and the elements of Section 271 review. Further, the Montana Commission's proffered remedy, which it requests the FCC require under its Section 271 public interest review, is a complete revenue requirements and retail rate design case concerning regulated intrastate services. This second full leap away from Section 271 does not (for FCC purposes) directly relate to the alleged access/long distance price squeeze, and invites an even greater FCC

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<sup>104</sup> In the Georgia application, the FCC concluded no wholesale/retail price squeeze existed because evidence did not indicate competitors were doomed to failure. Georgia Order, Para 284 and 287. In Kansas, AT&T raised the access charge/long distance disparity. There, the Kansas Commission opened a generic cost proceeding, which it stated was a preferable place to pursue the issue, much as I suggest here. Kansas State Report, page 37. In the Missouri/Arkansas Order the FCC stated that where precedent does not address specific facts or legal issues raised in a Section 271 proceeding, it will defer resolution of novel interpretive issues to separate proceedings. Missouri/Arkansas Order, Para. 92. Here, in the absence of precedent (as well as authority) for the FCC to address an intrastate long distance/access price squeeze, the FCC need only recognize the set of issues as within the Montana Commission's authority and ability to address.

engagement in complex intrastate ratemaking. *This is a well-intentioned bad idea.* Again, this is a timely and important set of issues, but a set of issues that should be addressed by the Montana Commission under its own authority.

Concerning the question of "reverse line sharing," I believe the Montana Commission's decision is an appropriate part of its emerging services analysis. Whether and to what extent a customer taking combined voice and DSL from Qwest should be able to continue receiving Qwest DSL when the customer switches to a CLEC voice provider is an issue that could benefit from FCC guidance. Both Qwest and the Montana Commission should look to the FCC for clarification, and respect an FCC decision on this topic.

Having come this far, I hope the FCC, the state commissions, and parties on all sides continue to "hang together" on the many important post-entry issues.

RESPECTFULLY SUBMITTED this 1st day of August, 2002.

A handwritten signature in black ink, appearing to read "Bob Rowe", written over a horizontal line.

Bob Rowe  
Commissioner, District 5